UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

HIRAM PATTERSON, TEXAS	§	
DIVISION SONS OF CONFEDERATE	§	
VETERANS, INC.,	§	
	§	
Plaintiffs,	§	No. 3:17-CV-02361-D
	§	
v.	§	
	§	
MIKE RAWLINGS, et al.,	§	
	§	
Defendants.	§	

<u>DEFENDANTS' MOTION TO DISMISS FOR LACK OF JURISDICTION AND</u> <u>FAILURE TO STATE A CLAIM</u>

TO THE HONORABLE COURT:

Defendants Mike Rawlings, Scott Griggs, Adam Medrano, Casey Thomas II, Dwaine Caraway, Rickey Callahan, Omar Narvaez, Kevin Felder, Tennell Atkins, Mark Clayton, Adam McGough, Lee Kleinman, Sandy Greyson, Jennifer Gates, and Philip Kingston, all sued in their official capacities as Mayor and City Council Members of the City of Dallas (hereafter collectively referred to as Defendants), file this motion to dismiss.¹

I. Plaintiff Lacks Standing and the Central Claim is Moot

Plaintiffs initially brought this action to enjoin the removal and storage of a statue owned by City of Dallas (the "City") that was located at a City park. Plaintiffs have no property interest in the statue or the land or any other cognizable interest in the statue or the actions of the City. Additionally, the statue has been removed and placed in storage. The claim is moot. Plaintiffs

¹ In their pleading, Plaintiffs list Manny Pelaez as an officer of the City of Dallas. (ECF No. 10, at 3 [¶ 11]). He is not listed in the caption. Mr. Palaez is a San Antonio council-member who one Plaintiff previously sued and Plaintiffs apparently failed to delete his name from their copied pleadings in that case. *See Brewer v. Nirenberg*, Civil Action No. 17-CV-837-DAE (W.D. Tex.) ECF No. 1 at 3 [¶ 12]).

amended their pleading and suggest some type of interest in different pieces of City property. They have no interest and no standing. Additionally, only political questions are raised by Plaintiffs' pleadings. Pursuant to Federal Rule 12(b)(1), all of the claims and causes of action against the City should be dismissed for lack of jurisdiction. A brief and appendix are filed in support of the motion.

II. In the Alternative, No Claim Is Stated

Plaintiffs initially brought this action to claiming "abridgments" to free speech and due process by the Defendants' actions in voting to remove and store a City-owned statue located at a City park. Plaintiffs abandoned any due process claim but the amended complaint repeats the claim regarding free speech. As to any claim of abridgment, the City Council vote occurred in a public City Council meeting after public notice and media attention, and only concerns government speech. No possible claim was stated. Plaintiffs' amended pleading suggests some type of claim of an interest in different pieces of City owned property. No possible claim is stated. Pursuant to Federal Rule 12(b)(6), all of the claims and causes of action against the Defendants should be dismissed for failing to state a claim. A brief and appendix are filed in support of the motion.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Defendants requests that the Court grant in whole, or alternatively in part, their motion to dismiss for lack of jurisdiction or in the alternative their motion to dismiss for failure to state a claim, dismiss this action with prejudice, and grant Defendants such other relief as the Court finds just.

Respectfully submitted, CITY ATTORNEY OF THE CITY OF DALLAS

Larry E. Casto Dallas City Attorney

/s/ Charles S. Estee STACY JORDAN RODRIGUEZ **Executive Assistant City Attorney** Texas Bar No. 11016750 stacy.rodriguez@dallascityhall.com

CHARLES S. ESTEE **Assistant City Attorney** State Bar of Texas No. 06673600 charles.estee@dallascityhall.com

7BN Dallas City Hall 1500 Marilla Street Dallas, Texas 75201 Telephone - 214/670-3519Telecopier – 214/670-0622

CERTIFICATE OF SERVICE

I certify that on September 29, 2017, I electronically filed the foregoing document with the clerk of court for the United States District Court for the Northern District of Texas using the electronic case failing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to all counsel of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Charles S. Estee

Charles S. Estee